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14 *Attorneys for Plaintiff David Ventura*
 15 *and the Proposed Class*

16
 17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 DAVID VENTURA, individually and as
 20 representative of a class of participants
 21 and beneficiaries and on behalf of the
 22 Lithia Motors, Inc. 401(K) Plan,

22 Plaintiff,

23 v.

24 LITHIA MOTORS, INC.,

25 Defendant.
 26
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Case No.

CLASS ACTION COMPLAINT

1 Plaintiff David Ventura (“Ventura” or “Plaintiff”), individually and on behalf of all
2 others similarly situated, and on behalf of the Lithia Motors, Inc. 401(k) Plan (the “Plan”),
3 makes the following allegations based upon information and belief, except as to those
4 allegations specifically pertaining to Plaintiff and her counsel, which are based on personal
5 knowledge. Plaintiff brings this action for monetary damages, disgorgement, and equitable
6 relief under the Employee Retirement Income Security Act of 1974 (“ERISA”).

7 **NATURE OF THE ACTION**

8 1. This action arises out of Defendant Lithia Motors, Inc.’s (“Defendant” or
9 “Lithia”) wrongful conduct in connection with the Lithia Motors, Inc. 401(k) Plan (the
10 “Plan”), a defined contribution employee retirement plan with over \$1.03 billion in net
11 assets and more than 29,000 participants as of December 31, 2024. As set forth herein,
12 Defendant breached its fiduciary duties under the Employee Retirement Income Security
13 Act of 1974 (“ERISA”) by: (i) diverting at least \$17.3 million in forfeited plan assets to
14 reduce its own employer contribution obligations rather than using those funds for the
15 benefit of plan participants; (ii) paying excessive and prohibited administrative fees to
16 parties in interest, including recordkeeping fees to Merrill Lynch, Pierce, Fenner & Smith,
17 Inc. (“Merrill Lynch”) that grew from approximately \$961,929 in 2020 to \$1,633,011 in
18 2024 and far exceeded market rates for comparable plans; (iii) imprudently transitioning
19 the Plan’s target-date fund suite – holding approximately \$570.6 million (over 57% of Plan
20 assets) – from transparent, SEC-regulated mutual funds into unregistered, structurally
21 opaque collective investment trusts (“CITs”) without ensuring adequate fee transparency
22 or scrutinizing the hidden indirect compensation extracted by conflicted service providers;
23 and (iv) failing to properly monitor the Plan’s management and administration. In this
24 action, Plaintiff seeks damages and equitable relief in connection with Defendant’s
25 wrongful conduct in misusing and mismanaging Plan assets.

26 **JURISDICTION AND VENUE**

27 2. This action is brought under 29 U.S.C. §§ 1132(a), (e), (f) and (g) as it
28 involves a claim by Plaintiff for employee benefits under an employee benefit plan

1 regulated and governed by ERISA. Subject matter jurisdiction is predicated under these
2 code sections as well as 28 U.S.C. § 1331 as this action involves a federal question.

3 3. The Court has personal jurisdiction over Defendant because ERISA provides
4 for nationwide service of process, and Defendant transacts business and has significant
5 contacts in this District. See 29 U.S.C. § 1132(e)(2).

6 4. Venue is proper in this judicial district pursuant to 29 U.S.C. §1132(e)(2),
7 which provides that an ERISA action may be brought in the district where the plan is
8 administered, where the breach took place, or where a defendant resides or may be found.
9 Venue is proper here because Plaintiff is a resident of this district, the Plan is administered
10 in part in this district through Defendant’s operations in California, and Defendant may be
11 found in this district through its substantial and continuous business operations within the
12 State of California.

13 **THE PARTIES**

14 5. Plaintiff David Ventura is an individual and resident of California who was
15 employed by Lithia Motors and was a participant in the Plan at issue within the statute of
16 limitations for each cause of action pled.

17 6. The Lithia Motors, Inc. 401(k) Plan (the “Plan”) is a defined contribution,
18 individual account, employee pension benefit plan under 29 U.S.C. §1002(2)(A) and §
19 1002(34) and is subject to the provisions of ERISA pursuant to 29 U.S.C. § 1003(a). The
20 Plan is identified by Employer Identification Number 93-0572810 and Plan Number 003.
21 The Plan was originally established with an effective date of January 1, 1980, and was
22 formerly known as the Lithia Motors, Inc. Salary Reduction Profit Sharing Plan. The Plan
23 covers eligible employees of Lithia and its subsidiaries. Participants may make elective
24 deferral contributions, including through payroll withholding, and may make rollover
25 contributions from other qualified plans.

26 7. Defendant Lithia Motors, Inc. is a corporation authorized to conduct and
27 actually conducting business in the State of California, and is the Plan Sponsor and Plan
28 Administrator of the Plan, headquartered at 150 N. Bartlett Street, Medford, Oregon 97501.

1 8. Lithia Motors exercised discretionary authority and/or control over the
2 management and/or administration of the Plan, and/or rendered investment advice
3 regarding the Plan, and is a fiduciary of the Plan, including pursuant to 29 U.S.C.
4 §1002(21)(A).

5 9. Lithia Motors acted through its officers, including its Board of Directors, to
6 perform Plan related fiduciary functions in the course and scope of their business. Lithia
7 Motors and its Board appointed other Plan fiduciaries on a 401(k) plan committee (the
8 “Committee”) to manage the operation and administration of the Plan. Lithia Motors has
9 delegated certain fiduciary responsibilities to the Committee, and accordingly had a
10 concomitant fiduciary duty to monitor and supervise those appointees. For these reasons,
11 Lithia Motor are fiduciaries of the Plans, within the meaning of 29 U.S.C. § 1002(21)(A).

12 10. The Plan is administered by the Committee. As a plan administrator, the
13 Committee is a fiduciary responsible for the day-to-day administration and operation of the
14 Plan under 29 U.S.C. § 1002(21)(A). The Committee has authority and responsibility for
15 the control, management, and administration of the Plan in accordance with 29 U.S.C. §
16 1102(a), with all powers necessary to properly carry out such responsibilities.

17 **THE PLAN**

18 **A. PLAN STRUCTURE AND SERVICE PROVIDERS.**

19 11. The assets of the Plan are held in a trust fund pursuant to 29 U.S.C. §1103(a).
20 The Plan is funded by a combination of employee/participant contributions (usually paid
21 through wage withholdings) and employer contributions, which are deposited into the
22 Plan’s trust fund. Once deposited into the Plan’s trust fund, all employee/participant and
23 employer contributions become assets of the Plan.

24 12. Defendant contracted with Bank of America (“BANA”) to serve as the
25 Plan’s custodian and trustee and for Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill
26 Lynch”), an affiliate of Bank of America, to serve as the Plan’s recordkeeper and third-
27 party administrator.

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1 **B. PLAN SIZE AND GROWTH.**

2 13. The Plan is a large defined contribution plan with significant assets. Public
3 filings report net assets available for benefits at year end of approximately: \$451,980,057
4 (2019), \$572,930,453 (2020), \$730,182,961 (2021), \$655,333,166 (2022), \$863,280,801
5 (2023), and \$1,030,165,595 (2024).

6 14. The Plan has experienced extraordinary growth in net assets over the
7 relevant period, nearly tripling in size from approximately \$344 million to over \$1.03
8 billion:

Plan Year-End	Net Assets	Year-Over-Year Change
12/31/2018	\$344,320,429	—
12/31/2019	\$451,980,057	+\$107,659,628
12/31/2020	\$572,930,453	+\$120,950,396
12/31/2021	\$730,182,961	+\$157,252,508
12/31/2022	\$655,333,166	-\$74,849,795
12/31/2023	\$863,280,801	+\$207,947,635
12/31/2024	\$1,030,165,595	+\$166,884,794

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19 15. By December 31, 2024, the Plan held over \$1.03 billion in net assets, making
20 it a “mega-plan” by industry standards. A plan of this size should have been able to
21 leverage its massive buying power to negotiate significantly lower recordkeeping fees
22 and gain access to the lowest-cost share classes and investment vehicles available in the
23 marketplace.

24 16. The Plan also has a large participant base and has experienced substantial
25 growth in the number of participants over the relevant period. Based on the Plan’s Form
26 5500 filings, the 2022 plan year reported 26,227 total participants at the beginning of the
27 year and 29,235 total participants at the end of the year, with 26,052 participants holding
28 account balances. Of those, 2,713 participants had terminated employment with less than

1 100% vesting, generating the forfeited account balances at issue in this action. The Plan's
2 Form 5500 filings report that the number of participants with account balances at the end
3 of the plan year was approximately: 16,311 (2019), 16,203 (2020), 23,283 (2021), 26,052
4 (2022), 26,750 (2023), and 26,680 (2024).

5 **C. CONTRIBUTIONS, VESTING SCHEDULE, AND FORFEITURES.**

6 17. Under the Plan, participants' accounts are credited with participant
7 contributions and allocations of employer contributions and Plan earnings, and
8 participants' accounts are charged with an equal, per-capita allocation of the Plan's
9 administrative expenses.

10 18. The Plan's employer matching formula changed over the relevant period.
11 From 2019 to 2020, Defendant matched 55% on the first \$2,500 of employee
12 contributions. In 2021, the match increased to 70% on the first \$2,500. In 2022, the
13 match increased to 85% on the first \$2,500. Beginning in 2023, Defendant matched
14 100% on the first \$2,500 of employee contributions. For plan years 2019 through 2021,
15 participants were required to be employed on the last day of the plan year to be eligible
16 for the employer contribution.

17 19. Participants are immediately vested in their own contributions (and earnings
18 thereon). Vesting in employer contributions is graded, which causes participants who
19 terminate employment before full vesting to forfeit the non-vested portion of employer
20 contributions. In 2019 (and again in 2022), the Plan disclosed that participants were 1%
21 vested upon participation and became 20% vested after two years of service, vesting 20%
22 per year thereafter until 100% vested after six years of credited service. By 2024, the
23 Plan disclosed a vesting schedule under which participants became 20% vested after one
24 year of service and then became 100% vested after five years of credited service.

25 20. The lengthy graded vesting schedules, when combined with the high
26 employee turnover inherent in the automotive retail industry (Lithia's primary business),
27 generate significant forfeitures each year, making the disposition of those forfeitures a
28 critical fiduciary decision.

1 21. The Plan maintains forfeiture accounts for forfeited non-vested amounts.
2 The Plan disclosed that forfeitures are recorded in a separate account and are used to
3 reduce future employer contributions and otherwise as permitted by the Plan.

4 22. The Plan's public filings report substantial forfeiture balances at year end,
5 including, for example, forfeited non-vested accounts totaling \$1,533,815 at December
6 31, 2019; approximately \$2,483,000 at December 31, 2021; approximately \$2,548,000 at
7 December 31, 2022; approximately \$967,000 at December 31, 2023; and approximately
8 \$2,376,000 at December 31, 2024.

9 23. The Plan's public filings further show that Defendants used forfeitures to
10 reduce Lithia's employer contribution obligations. The Plan disclosed, for example, that
11 employer contributions were reduced by \$2,111,000 in 2022, \$3,671,000 in 2023, and
12 \$7,448,000 in 2024 from forfeited accounts.

13 **FACTUAL ALLEGATIONS**

14 **A. DEFENDANT'S IMPOSITION OF EXCESSIVE AND PROHIBITED**
15 **ADMINISTRATION FEES.**

16 24. Despite the Plan's size and economies of scale, the Plan reported substantial
17 annual administrative expenses and disclosed that those expenses are charged to participant
18 accounts on a per-capita basis.

19 25. The Plan's public filings report administrative expenses of approximately:
20 \$1,070,955 (2019), \$977,532 (2020), \$1,135,627 (2021), \$1,461,614 (2022), \$937,204
21 (2023), and \$1,054,023 (2024).

22 26. Based on the Plan's reported administrative expenses and reported
23 participants with account balances at year end, the Plan's annual administrative expenses
24 equate to approximately: \$66 per participant (2019), \$60 per participant (2020), \$49 per
25 participant (2021), \$56 per participant (2022), \$35 per participant (2023), and \$40 per
26 participant (2024).

27 27. The Plan's public Form 5500 filings identify Merrill Lynch as the Plan's
28 recordkeeper and report substantial direct compensation paid to that recordkeeper. For

1 example, the Plan’s 2024 Form 5500 Schedule C reports \$1,633,011 in direct compensation
2 paid to the recordkeeper.

3 28. The Plan’s public filings likewise report other professional service fees paid
4 from Plan assets, including audit and consulting fees. For example, the Plan’s 2024 Form
5 5500 Schedule C reports direct compensation paid to KBF CPAs as the Plan’s accountant
6 and auditor and to Deschutes Investment Consulting as the Plan’s consultant.

7 29. Based on the Plan’s reported participants with account balances at the end of
8 2024, the Plan’s reported 2024 direct recordkeeping compensation of \$1,633,011 equates
9 to at least approximately \$61 per participant with an account balance, before considering
10 any additional indirect compensation (including, for example, compensation paid through
11 investment-related arrangements that are not separately itemized as an “administrative
12 expense” line item).

13 30. The Plan’s 2020 Form 5500 Schedule C similarly reports substantial direct
14 compensation paid to the Plan’s recordkeeper, including \$961,929 in direct compensation
15 paid to Merrill Lynch as recordkeeper.

16 31. The Plan invests in mutual funds, collective investment vehicles, and Lithia
17 common stock. The Plan’s public disclosures report that, as of December 31, 2024, the
18 Plan held \$618,130,795 in common collective trust funds, \$332,036,474 in registered
19 investment companies, and \$36,976,215 in Lithia common stock.

20 32. The Plan’s Form 5500 Schedule of Assets for 2024 lists, among the Plan’s
21 collective trust holdings, a suite of JPMorgan collective trust target date funds (JPMCB
22 SmartRetirement Passive funds) and other collective trusts and index options, as well as a
23 stable value option and participant loans.

24 33. The Plan also disclosed that certain Plan investments are managed by BANA,
25 the Plan’s trustee, and that certain investment fees are paid by the trustee and reflected in
26 investment income or loss (i.e., netted against returns), rather than appearing as separately
27 itemized line-item administrative expenses.

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1 34. Under ERISA, a fiduciary must act prudently and exclusively in the interest
2 of participants. This requires a diligent process to verify the value, holdings, and risks of
3 Plan investments.

4 35. Defendant allowed BANA and its affiliate Merrill Lynch to act under the
5 Plan as trustee, custodian, recordkeeper, and/or investment manager, which presents
6 conflicts of interest that implicate prohibited transactions under ERISA.

7 36. By permitting BANA, either directly or indirectly through its affiliate Merrill
8 Lynch, to perform recordkeeping services and provide investment advisory services,
9 Defendant has engaged in prohibited transactions and allowed extra costs that inflated
10 per-participant expenses. Plaintiff is informed and believes, and on that basis alleges,
11 that Defendant has also allowed BANA to use its affiliate's role as recordkeeper to obtain
12 information for use in its role as investment advisor.

13 37. The direct compensation paid by the Plan to Merrill Lynch, as reported on
14 Schedule C of the Plan's Form 5500 Annual Report, escalated substantially during the
15 relevant period despite the Plan's growth in assets, which should have provided increased
16 bargaining leverage:

Plan Year	Direct Compensation to Merrill Lynch	Indirect Compensation
2019	\$1,032,951	Yes (undisclosed amount)
2020	\$961,929	Yes (undisclosed amount)
2021	\$1,052,682	Yes (undisclosed amount)
2022	\$1,380,206	Yes (undisclosed amount)
2023	\$1,520,067	Yes (undisclosed amount)
2024	\$1,633,011	Yes (undisclosed amount)

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25 38. In addition to the direct compensation detailed above, Merrill Lynch also
26 received eligible indirect compensation in undisclosed amounts in each year. The
27 indirect compensation was not reported in dollar amounts because the Plan checked
28 "Yes" on the eligible indirect compensation disclosure line on Schedule C, exempting it

1 from dollar reporting.

2 39. Administrative expenses are charged to participants on a per capita basis
3 (equal amount per participant), as disclosed in the Plan's Notes to Financial Statements.
4 Using 2022 data as a reference point, with approximately 26,052 participants holding
5 account balances and total administrative expenses of \$1,461,614, the per-participant
6 charge was approximately \$56.

7 40. A reasonable market rate for recordkeeping services for a plan of Lithia's
8 size (with over \$1 billion+ assets and approximately 26,000 participants) is \$20 or less
9 per participant. For example, during the class period, the *Disney Savings and Investment*
10 *Plan* paid between \$3 and \$11 per participant; the *Providence Health & Services Plan*
11 paid between \$4 and \$26 per participant; and the *CBRE 401(k) Plan* paid between \$18
12 and \$31 per participant for identical or substantially similar services.

13 41. BANA and Merrill Lynch were fiduciaries and/or parties in interest of the
14 Plan. Accordingly, the payment of fees to BANA and Merrill Lynch constituted
15 prohibited transactions under ERISA.

16 42. Defendant's charges for administrative fees, including recordkeeping fees,
17 for BANA and Merrill Lynch are excessive and unreasonable, particularly in light of the
18 Plan's status as a \$1 billion+ mega-plan with substantial bargaining power.

19 43. Defendant allowed unreasonably excessive administrative expenses to be
20 incurred by participants. The Plan at issue, and Plaintiff's interests in it, have been
21 harmed by Defendant's inflated, conflicted administrative fees.

22 **B. DEFENDANT'S MISUSE OF FORFEITED PLAN ASSETS.**

23 44. Participants who have a break in service prior to full vesting of employer
24 contributions forfeit the balance of unvested employer contributions, and Defendant
25 exercises control over how these Plan assets are thereafter allocated.

26 45. Defendants exercised control over forfeited Plan assets and over how the
27 Plan's administrative expenses were funded and allocated. Yet, despite disclosing that
28 participants' accounts are charged a per-capita allocation of administrative expenses,

1 Defendants consistently used forfeitures to reduce Lithia’s employer contribution
2 obligations.

3 46. For example, in 2022, the Plan reported administrative expenses of
4 \$1,461,614 while Lithia’s employer contributions were reduced by \$2,111,000 from
5 forfeited accounts. In 2023, the Plan reported administrative expenses of \$937,204 while
6 employer contributions were reduced by \$3,671,000 from forfeited accounts. In 2024, the
7 Plan reported administrative expenses of \$1,054,023 while employer contributions were
8 reduced by \$7,448,000 from forfeited accounts.

9 47. Plaintiff is informed and believes, and on that basis alleges, that as part of a
10 wrongful pattern and practice, Defendant has wrongfully and consistently used forfeited
11 nonvested plan assets for its own benefit, to reduce future employer contributions, rather
12 than for the benefit of Plan participants. Defendant’s use of Plan forfeited assets to offset
13 its employer contributions violates ERISA statutes, including but not limited to, 29
14 U.S.C. §§1103(c)(1), 1104(a)(1), and 1106.

15 48. The Plan’s Form 11-K Annual Reports and Form 5500 financial statements
16 disclose the following forfeiture activity during the relevant period:

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Year	Forfeitures Available (Year-End)	Forfeitures Used During Year	Stated Purpose
2019	\$1,533,815	— ¹	Reduce future employer contributions
2020	\$2,064,000	\$2,078,000	Reduce employer contribution
2021	\$2,483,000	\$2,016,000	Reduce employer contribution
2022	\$2,548,000	\$2,111,000	Reduce employer contribution
2023	\$967,000	\$3,671,000	Reduce employer contribution
2024	\$2,376,000	\$7,448,000	Reduce employer contribution
TOTAL:		\$17,324,000+	All used to benefit the employer

49. In 2020, Defendant’s own filings stated: “Forfeitures totaling approximately \$2,078,000 were used to reduce the 2020 employer contribution.”

50. In 2021, Defendant’s filings stated: “Forfeitures totaling approximately \$2,016,000 were used to reduce the 2021 employer contribution.”

51. In 2022, Defendant’s filings stated: “Forfeitures totaling approximately \$2,111,000 were used to reduce the 2022 employer contribution.”

52. In 2023, Defendant’s filings stated: “Forfeitures totaling approximately \$3,671,000 were used to reduce the 2023 employer contribution.”

53. In 2024, Defendant’s filings stated: “Forfeitures totaling approximately \$7,448,000 were used to reduce the 2024 employer contribution.” Notably, the 2024 11-

¹ The 2019 11-K states only that forfeitures “are used to reduce future employer contributions” without specifying the dollar amount used for that plan year.

1 K added new language stating that forfeitures were available “to reduce future
2 contributions and to be used as permitted in the Plan,” suggesting awareness by
3 Defendant of the legal scrutiny surrounding forfeiture practices, yet the forfeitures
4 continued to be used exclusively to offset employer contributions.

5 54. The amount of forfeitures used to reduce employer contributions escalated
6 dramatically, from approximately \$2,078,000 in 2020 to \$7,448,000 in 2024 – a 258%
7 increase – corresponding to the Plan’s rapid growth in participants and the high turnover
8 rates typical of the automotive retail industry.

9 55. Defendant’s allocation of forfeited fund assets to reduce its own employer
10 contributions benefited Defendant, but harmed the Plan and participants in the Plan, by
11 reducing Plan assets, not allocating forfeited funds to participants’ accounts, and/or by
12 causing participants to incur expenses that could otherwise have been covered in whole
13 or in part by forfeited funds.

14 56. By choosing to use forfeited Plan assets to benefit itself and not the Plan or
15 the Plan’s participants, Defendant placed its own interests above the interests of the Plan
16 and its participants.

17 57. In each of 2022, 2023, and 2024, the amount of forfeitures used to reduce
18 Lithia’s employer contribution obligations exceeded the Plan’s annual administrative
19 expenses charged to participant accounts, indicating that forfeitures were sufficient to
20 cover those administrative expenses in whole and still leave substantial forfeiture
21 balances remaining.

22 58. Between 2022 and 2024 alone, the Plan used at least \$13,230,000 of forfeited
23 Plan assets to reduce Lithia’s employer contributions, while the Plan reported at least
24 \$3,452,841 in administrative expenses over the same period that were charged to
25 participant accounts on a per-capita basis.

26 59. Upon information and belief, the Plan’s governing document granted
27 Defendants the discretion to use forfeited non-vested accounts to either pay Plan
28 administrative expenses or reduce employer contributions. Faced with this choice,

1 Defendants breached their Duty of Loyalty by systematically resolving this discretion in
2 their own favor, offsetting \$17.3 million of Lithia's corporate matching debt rather than
3 sparing participants from millions of dollars in out-of-pocket “per capita” fee deductions.

4 60. Defendants’ consistent practice of using forfeitures to offset Lithia’s
5 employer contributions reduced Lithia’s costs while Plan participants continued to bear
6 Plan administration costs through per-capita charges and through the reduction of Plan
7 assets available for participants’ retirement.

8 61. A prudent and loyal fiduciary would have evaluated whether Plan forfeitures
9 should be used to pay Plan administrative expenses (thereby reducing the per-capita
10 charges to participants) instead of using those forfeitures to reduce Lithia’s employer
11 contribution obligations.

12 62. Upon information and belief, Defendants failed to engage in a reasoned,
13 loyal, and prudent process to ensure that (a) the Plan’s administrative and recordkeeping
14 costs (including direct and indirect compensation) were reasonable, and (b) forfeited Plan
15 assets were used in a manner that maximized benefits to Plan participants rather than
16 reducing Lithia’s costs.

17 **C. DEFENDANT’S IMPRUDENT SELECTION AND RETENTION OF PLAN**
18 **INVESTMENTS.**

19 63. The Plan offers a mix of common collective trust funds, registered
20 investment companies (mutual funds), Lithia Motors company stock, and a stable value
21 fund. Defendant, as a fiduciary of the Plan, had a duty to prudently select, monitor, and
22 where appropriate, replace the Plan’s investment options.

23 64. Throughout the Class Period and through at least December 31, 2023, the
24 Plan’s target-date fund (“TDF”) lineup consisted of JPMorgan SmartRetirement Blend
25 R6 mutual fund shares – registered investment companies classified as Level 1 assets in
26 the Plan’s fair value hierarchy. As of December 31, 2023, these JPMorgan
27 SmartRetirement Blend R6 mutual funds held approximately \$472.7 million in Plan
28 assets across eleven target-date vintages, representing more than 56% of the Plan’s total

1 investments

2 65. Between plan years 2023 and 2024, Defendant caused the Plan to replace the
3 entire JPMorgan SmartRetirement Blend R6 mutual fund lineup with JPMCB
4 SmartRetirement Passive (“PASV”) collective investment trust (“CIT”) units. As of
5 December 31, 2024, these CIT units held approximately \$570.6 million in Plan assets –
6 more than 57% of the Plan’s total investments:

Fund	Balance (12/31/2024)
JPM SmartRetirement CF A	\$ 15,200,939
JPM SmartRetirement 2020	\$ 15,942,761
JPM SmartRetirement 2025	\$ 43,160,276
JPM SmartRetirement 2030	\$ 67,717,459
JPM SmartRetirement 2035	\$ 65,765,003
JPM SmartRetirement 2040	\$ 67,410,428
JPM SmartRetirement 2045	\$ 73,834,058
JPM SmartRetirement 2050	\$ 75,006,408
JPM SmartRetirement 2055	\$ 69,815,424
JPM SmartRetirement 2060	\$ 73,430,162
JPM SmartRetirement 2065	\$ 3,284,816
TOTAL TDF SUITE:	\$ 570,567,734

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20 66. The transition is reflected on the Plan’s balance sheet. As shown in the Plan’s
21 2024 Form 11-K, Plan assets classified as “registered investment companies” fell from
22 \$620,199,623 at year-end 2023 to \$332,036,474 at year-end 2024 – a decline of
23 approximately \$288.2 million. During the same period, assets classified as “common
24 collective trust funds” increased from \$173,324,860 to \$618,130,795 – a gain of
25 approximately \$444.8 million. The net effect was to transfer the majority of the Plan’s
26 assets from registered investment vehicles subject to the Investment Company Act of
27 1940 (“1940 Act”) to unregistered collective trusts exempt from 1940 Act requirements.

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1 67. Unlike mutual funds, CITs are not registered under the 1940 Act and are not
2 subject to regulation by the Securities and Exchange Commission (“SEC”). CITs do not
3 file public prospectuses. CITs are not required to publish standardized expense ratios.
4 CITs are not required to make public the same level of portfolio composition,
5 performance, or fee information that mutual funds must disclose under the 1940 Act and
6 SEC regulations. CITs are instead governed by the Office of the Comptroller of the
7 Currency (for national bank trusts) or state banking regulators, under a regulatory
8 framework that imposes substantially fewer disclosure obligations.

9 68. The Plan’s own financial statements confirm the reduced transparency of
10 CIT holdings. Under the fair value hierarchy required by generally accepted accounting
11 principles (“GAAP”), the Plan’s 2023 Form 11-K classified its mutual fund holdings
12 (including all TDFs) as Level 1 assets – the most transparent category, reflecting
13 “unadjusted quoted prices for identical assets or liabilities in active markets.” By
14 contrast, the Plan’s 2024 Form 11-K reports the replacement CIT holdings as
15 “[i]nvestments measured at NAV,” entirely outside the fair value hierarchy. The 2024
16 Form 11-K states that these common collective trust funds are “valued at net asset value
17 (‘NAV’) per share or its equivalent of the funds, which are based on the fair value of the
18 funds’ underlying assets.” This means that more than \$618 million in Plan assets –
19 including the \$570.6 million in TDFs that are the default investment for the
20 overwhelming majority of participants – are no longer subject to Level 1 fair value
21 measurement and instead rely on NAV-based valuations provided by the CIT trustee
22 itself.

23 69. Neither the Plan’s 2024 Form 11-K, nor the 2024 Schedule of Assets (Held
24 at End of Year), nor the 2024 Form 5500, discloses the expense ratios, management fees,
25 or total annual operating costs of the JPMCB SmartRetirement Passive CIT funds. While
26 the SmartRetirement Blend R6 mutual funds were required by SEC regulation to publish
27 expense ratios and provide prospectuses that disclosed all fees, the replacement CIT
28 vehicles carry no such obligation. The Plan’s filings are thus silent as to the actual cost

1 that participants bear through these investment vehicles – even though these vehicles hold
2 the majority of the Plan’s assets.

3 70. CITs deduct investment management fees, trustee fees, and administrative
4 expenses directly from the fund’s NAV before the NAV is reported to participants.
5 Unlike mutual fund expense ratios, which are standardized, publicly reported, and readily
6 comparable across providers, CIT fees are embedded within the NAV calculation and are
7 not required to be separately itemized in any public filing. As a result, participants in the
8 Plan have no standardized, publicly available means of determining the total fees they are
9 paying through the Plan’s CIT holdings, nor any standardized means of comparing those
10 fees against alternative investment options offered by competing providers.

11 71. A prudent fiduciary who transitions more than half a billion dollars in
12 participant retirement assets from publicly regulated mutual funds to unregistered CITs
13 has a duty to ensure that the transition does not diminish the transparency of fees and
14 investment information available to participants. Defendants failed to discharge this
15 duty. Neither the Plan’s Form 5500 filings, nor the Form 11-K annual reports, nor any
16 other publicly available Plan document reviewed by Plaintiff discloses the total expense
17 ratios or all-in costs of the JPMCB SmartRetirement Passive CIT funds, the basis on
18 which these funds were selected over competing CIT or mutual fund alternatives, or any
19 analysis showing that the CIT fees are reasonable in light of the services provided.

20 72. On information and belief, the JPMCB SmartRetirement Passive CIT funds
21 pay revenue-sharing, sub-transfer agency, or other indirect compensation to Merrill
22 Lynch and/or BANA out of the CIT’s management fees or other fund-level expenses.
23 The Form 5500 Schedule C for each year in the Class Period reports that Merrill Lynch
24 received “eligible indirect compensation” from sources other than the Plan or Plan
25 sponsor, yet no dollar amount is disclosed for this indirect compensation in any filing
26 year. The transition from mutual funds – which are required to disclose revenue-sharing
27 arrangements in their prospectuses – to CITs – which are not – further obscures the total
28 compensation flowing to the Plan’s recordkeeper and makes it more difficult for

1 participants and regulators alike to evaluate whether the Plan’s total fee structure is
2 reasonable.

3 73. On information and belief, the JPMCB SmartRetirement Passive CIT funds
4 are managed by JPMorgan Chase Bank, N.A., and the CIT trustee is JPMorgan Chase
5 Bank, N.A. The Plan’s custodian and trustee is BANA, and its recordkeeper is Merrill
6 Lynch – both affiliates of Bank of America Corporation. A prudent fiduciary would have
7 scrutinized whether the embedded fee arrangements between the CIT manager
8 (JPMorgan) and the Plan’s recordkeeper (Merrill Lynch/BANA) involve revenue-
9 sharing, sub-transfer agency fees, or other payments that may create conflicts of interest
10 and increase the total cost borne by participants. Defendant either failed to conduct this
11 analysis or conducted it and accepted an arrangement that prioritized relationships
12 between institutional service providers over the interests of Plan participants.

13 74. The practical effect of the transition is that participants in the Plan can no
14 longer look up their TDF’s expense ratio on any public financial website, compare it
15 against Morningstar or other independent databases, or read a standardized prospectus
16 disclosing all fees and risks. Participants who held JPMorgan SmartRetirement Blend
17 R6 mutual fund shares through December 2023 could access the fund’s SEC-mandated
18 prospectus, annual report, and publicly reported expense ratio. Participants who now hold
19 JPMCB SmartRetirement Passive CIT units have access to none of these standardized
20 disclosures. Defendant has provided no substitute mechanism for ensuring that
21 participants can evaluate the costs and performance of their default retirement investment
22 with the same rigor that mutual fund regulation affords.

23 75. By transitioning approximately \$570.6 million in Plan assets from regulated
24 mutual funds to unregistered CITs without ensuring that participants retained access to
25 standardized fee disclosures, and without publicly documenting the fee comparison
26 underlying the decision, Defendant failed to act “with the care, skill, prudence, and
27 diligence” required of ERISA fiduciaries under 29 U.S.C. § 1104(a)(1)(B). A prudent
28 fiduciary evaluating a CIT transition would, at minimum, (a) obtain and document the

1 all-in expense ratio for each CIT vintage; (b) compare those costs against the expense
2 ratios of the incumbent mutual funds and competing alternatives; (c) evaluate the total
3 cost to participants including any revenue-sharing or indirect compensation flowing from
4 the CIT to the Plan’s service providers; (d) assess whether the reduced transparency of
5 the CIT structure was offset by measurably lower fees or superior performance; and (e)
6 ensure that participants received clear, standardized disclosure of the fees embedded in
7 their new default investment. On information and belief, Defendant failed to perform one
8 or more of these steps.

9 76. By selecting a CIT structure that reduces fee transparency while maintaining
10 or increasing the flow of indirect compensation to the Plan’s recordkeeper, Defendant
11 failed to act “solely in the interest of the participants and beneficiaries” and “for the
12 exclusive purpose of providing benefits to participants and their beneficiaries” as required
13 by 29 U.S.C. § 1104(a)(1)(A). The opacity inherent in the CIT structure benefits the
14 Plan’s service providers – who can collect revenue-sharing and other indirect
15 compensation without public scrutiny – at the expense of participants – who can no longer
16 evaluate whether those costs are reasonable. Defendant had a duty to ensure that any
17 investment vehicle transition served the exclusive interests of Plan participants, not the
18 institutional convenience or commercial preferences of the Plan’s service providers.

19 77. The transition to CITs also impairs the Committee’s ongoing ability to
20 monitor the Plan’s investments as required by 29 U.S.C. § 1104(a)(1)(B). Mutual funds
21 provide fiduciaries with publicly available, independently audited, and standardized
22 performance and fee data that can be benchmarked against peers using widely available
23 databases. CITs do not provide this standardized data. By selecting CIT vehicles for the
24 Plan’s default investment – the single investment option that holds the largest share of
25 Plan assets and that determines retirement outcomes for participants who do not make an
26 affirmative investment election – Defendant has made its own ongoing monitoring
27 obligation more difficult to fulfill, and has made it virtually impossible for participants
28 to independently verify that fiduciaries are fulfilling that obligation.

1 78. Unlike traditional retail or institutional mutual funds, CITs are bank-
2 maintained pooled investment vehicles. Because they are maintained by banks, they sit
3 outside the regulatory perimeter of the Securities and Exchange Commission (“SEC”)
4 and are generally exempt from the strict registration and reporting requirements of the
5 Investment Company Act of 1940 and the Securities Act of 1933.

6 79. Because of this SEC exemption, CITs operate with a structural opacity that
7 mutual funds do not. CITs are not required to issue publicly available, standardized
8 prospectuses or Statements of Additional Information (“SAIs”). Their detailed fee
9 structures, trading costs, and revenue-sharing arrangements are far less transparent to the
10 public and are not housed in accessible SEC databases.

11 80. Furthermore, unlike registered mutual funds, CITs are not required to
12 maintain independent boards of directors. Mutual fund boards are legally mandated to
13 independently monitor fund management, negotiate sub-advisory fees, and protect
14 shareholders from conflicts of interest. CITs lack this structural, independent safeguard.

15 81. Due to this structural opacity and the absence of mutual-fund-style
16 independent governance, ERISA fiduciaries cannot simply rely on public market forces,
17 standardized retail disclosures, or SEC oversight to evaluate CITs. Instead, fiduciaries
18 who choose to utilize CITs bear a heightened duty to proactively obtain, rigorously
19 scrutinize, and continuously monitor the CITs’ governing declarations of trust,
20 participation agreements, audited financial statements, underlying fee schedules, and
21 indirect compensation arrangements.

22 82. Regulators have explicitly warned of the dangers of fiduciary complacency
23 regarding CITs. For example, as highlighted in testimony before the Department of
24 Labor’s ERISA Advisory Council, the SEC has identified numerous instances where CIT
25 trustees exercised only “minimal” or “cursory” oversight, effectively rubber-stamping the
26 decisions of affiliated investment advisers who performed virtually all investment
27 activities while extracting excessive fees.

28 ///

1 83. This heightened duty of independent due diligence was especially critical for
2 the Committee because the opaque JPMorgan target-date CITs were designated as the
3 Plan’s QDIA. Consequently, Defendant defaulted the vast majority of participants’
4 retirement savings into these unregulated vehicles.

5 84. The need for rigorous independent oversight was further compounded by the
6 severe conflicts of interest present in the Plan’s bundled service arrangement. As
7 explicitly admitted in Lithia’s 2024 Form 11-K: “Certain Plan investments are managed
8 by Bank of America, N.A., the trustee of the plan... Certain investment fees are paid by
9 the trustee and are reflected in investment income or loss for the year.”

10 85. Plaintiff is informed and believes, and on that basis alleges, that Defendant
11 failed to conduct the rigorous, independent evaluation required for these unregistered
12 vehicles. Instead of leveraging the Plan’s massive \$1 billion+ scale to demand full
13 transparency, negotiate customized fee schedules, or uncover indirect compensation
14 hidden within the CITs’ net returns, Defendant exhibited the exact “minimal and cursory
15 oversight” warned of by regulators.

16 86. By treating these opaque, unregistered trusts and conflicted proprietary
17 funds as “set it and forget it” investments, Defendant effectively rubber-stamped the
18 investment lineup. This failure of oversight allowed the Plan’s conflicted service
19 providers to extract excessive direct and indirect fees that were netted directly against
20 Plan participants’ retirement savings, in direct violation of Defendant’s fiduciary duties
21 of prudence and loyalty.

22 **CLASS ALLEGATIONS**

23 87. Plaintiff brings this action on behalf of himself and as representative of all
24 others who are similarly situated. Pursuant to Rules 23(a), (b)(2), and/or (b)(3) of the
25 Federal Rules of Civil Procedure, Plaintiff seeks certification of the following class initially
26 defined as follows:

27 *All participants and beneficiaries of the Lithia*
28 *Motors, Inc. 401(k) Plan, who participated in the*
Plan at any time within the statute of limitations for

1 *each claim pled, excluding Defendant and members*
2 *of any Plan Committee or board of directors (the*
3 *“Class”).*

4 88. Plaintiff and the Class reserve the right under Federal Rule of Civil
5 Procedure Rule 23(c)(1)(C) to amend or modify the class to include greater specificity,
6 by further division into subclasses, or by limitation to particular issues.

7 89. This action has been brought and may be properly maintained as a class
8 action under the provisions of Federal Rules of Civil Procedure Rule 23 because there is
9 a well-defined community of interest in the litigation and the proposed class is easily
10 ascertainable.

11 90. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so
12 numerous that joinder of all members is impractical. Based on the Plan’s Form 5500
13 filings, the Plan had approximately 29,235 total participants as of December 31, 2022, with
14 26,052 participants holding account balances. The Plan’s participant count has continued
15 to grow through 2024.

16 91. Commonality and Predominance. Fed. R. Civ. P. 23(a)(2) and (b)(3).
17 Common questions of law and fact exist as to all members of the proposed class and
18 predominate. These include whether Defendant breached its fiduciary duties by using
19 forfeitures to reduce employer contributions, whether administrative fees were excessive,
20 whether investment selections were imprudent, and whether Defendant failed to properly
21 monitor the Plan’s management.

22 92. Typicality. Fed. R. Civ. P. 23 (a)(3). The claims of the named Plaintiff are
23 typical of the claims of the proposed class. Plaintiff and all members of the class are
24 similarly affected by Defendant’s wrongful conduct as participants in the same Plan,
25 subject to the same fee structure, the same investment options, and the same forfeiture
26 practices.

27 93. Adequacy of Representation. Fed. R. Civ. P. 23(a)(4). Plaintiff will fairly
28 and adequately represent and protect the interests of the members of the proposed class.
Counsel who represent Plaintiff are competent and experienced in litigating large and

1 complex ERISA class actions.

2 94. Superiority. Fed. R. Civ. P. 23(b)(3). A class action is superior to all other
3 available means for the fair and efficient adjudication of this controversy. Individual
4 joinder of all members of the proposed Class is not practicable, and common questions of
5 law and fact exist as to all class members. Class action treatment will allow those similarly
6 situated persons to litigate their claims in the manner that is most efficient and economical
7 for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely
8 to be encountered in the management of this action that would preclude its maintenance as
9 a class action. Inconsistent or varying adjudications with respect to individual members of
10 the class would establish incompatible standards of conduct. Adjudications with respect
11 to individual class members would be dispositive of the interests of the other members not
12 parties to the individual adjudications and/or would substantially impair or impede their
13 ability to protect their interests. Defendant has acted or refused to act on grounds generally
14 applicable to the class, thereby making appropriate final injunctive relief or corresponding
15 declaratory relief with respect to the class as a whole.

16 **FIRST CLAIM FOR RELIEF**
17 **BREACH OF ERISA'S PROHIBITED TRANSACTIONS**
18 **29 U.S.C. § 1106**
19 **(By Plaintiff And Class Members Against Defendant)**

20 95. Plaintiff incorporates the preceding paragraphs as if fully set forth herein and,
21 to the extent necessary, pleads this cause of action in the alternative.

22 96. 29 U.S.C. § 1106(a)(1) provides that “[a] fiduciary with respect to a plan shall
23 not cause the plan to engage in a transaction, if he knows or should know that such
24 transaction constitutes a direct or indirect . . . (A) . . . exchange . . . of any property between
25 the plan and a party in interest; . . . (C) furnishing of goods, services, or facilities between
26 the plan and a party in interest; (D) transfer to or use by or for the benefit of a party in
27 interest, of any assets of the plan.” Defendant is a party in interest, as that term is defined
28 under 29 U.S.C. §1002(14), because it is a Plan fiduciary and/or service provider of the
Plan.

1 97. 29 U.S.C. § 1106(b) provides that “[a] fiduciary with respect to a plan shall
2 not,” among other things, “deal with the assets of the plan in his own interest or for his own
3 account.”

4 98. As to forfeited Plan assets: Defendant violated these prohibitions by utilizing
5 at least \$17.3 million in Plan assets (forfeited participant balances) to offset its own future
6 employer contributions to the Plan, thereby dealing with Plan assets in its own interest and
7 for its own account, in violation of 29 U.S.C. § 1106(a)(1)(D) and § 1106(b).

8 99. As to excessive fees paid to parties in interest: Defendant further violated
9 these prohibitions by paying excessive and unreasonable administrative fees from Plan
10 assets to BANA and its affiliate Merrill Lynch, which are fiduciaries and/or parties in
11 interest of the Plan, constituting prohibited furnishing of services between the Plan and
12 parties in interest in violation of 29 U.S.C. § 1106(a)(1)(A) and (C).

13 100. As a result of these prohibited transactions, Defendant caused the Plan to
14 suffer losses in the amount of the Plan assets that were substituted for future employer
15 contributions, the excessive and prohibited fees paid to fiduciaries or parties in interest,
16 and the lost investment returns on those assets.

17 101. Pursuant to 29 U.S.C. § 1109(a), Defendant is liable for the Plan losses
18 resulting from violation of ERISA’s prohibition on these transactions, as alleged in this
19 claim, and must restore to the Plan all profits secured through its use of Plan assets, and is
20 subject to other equitable or remedial relief as appropriate.

21 WHEREFORE, Plaintiff and the Class pray judgment against Defendant as hereafter
22 set forth.

23 **SECOND CLAIM FOR RELIEF**
24 **BREACH OF FIDUCIARY DUTY**
25 **29 U.S.C. § 1104(A)(1)**

26 **(By Plaintiff And Class Members Against Defendant)**

27 102. Plaintiff incorporates the preceding paragraphs as if fully set forth herein and,
28 to the extent necessary, pleads this cause of action in the alternative.

103. Under 29 U.S.C. § 1104(a)(1)(A), Defendant was required to discharge its

1 duties owed to the Plan “solely in the interest of the participants and beneficiaries and . .
2 . for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries,
3 and (ii) defraying reasonable expenses of administering the plan.” Defendant breached
4 its fiduciary duty under Section 1104(a)(1)(A) by: (a) allowing excessive administrative
5 expenses to be incurred, including recordkeeping fees to Merrill Lynch that grew from
6 \$961,929 to \$1,633,011 during the relevant period, without proper oversight or
7 competitive bidding; (b) permitting prohibited transactions and/or fees paid to fiduciaries
8 and/or parties in interest; and (c) utilizing at least \$17.3 million in forfeited Plan assets
9 for its own benefit, to decrease future employer contributions, rather than for the benefit
10 of Plan participants. In doing so, Defendant placed its interests above the interests of
11 Plan participants and beneficiaries.

12 104. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendant was required to discharge
13 its duties with respect to the Plan “with the care, skill, prudence, and diligence under the
14 circumstances then prevailing that a prudent man acting in a like capacity and familiar
15 with such matters would use in the conduct of an enterprise of a like character and with
16 like aims.” Defendant breached its fiduciary duty under Section 1104(a)(1)(B) by
17 allowing excessive administrative expenses, prohibited transactions and/or fees paid to
18 fiduciaries and/or parties in interest, and by declining to use the forfeited funds in the
19 Plan for the benefit of Plan participants, instead using such Plan assets to reduce the
20 Company’s own contributions to the Plan.

21 105. Pursuant to 29 U.S.C. § 1104(a)(1)(D), Defendant was required to discharge
22 duties solely in the interest of Plan participants, and “in accordance with the documents
23 and instruments governing the plan insofar as such documents and instruments are
24 consistent with the provisions of” ERISA. Defendant breached its fiduciary duty under
25 Section 1104(a)(1)(D) by using forfeited Plan assets, and/or paying fees to parties in
26 interest in prohibited transactions, in violation of ERISA statutes, as alleged herein.

27 106. Defendant failed to engage in a reasoned and impartial decision-making
28 process regarding use of forfeited funds, payment of administrative fees, and/or oversight

1 of investment options. Defendant's actions in this regard have not been in the best interest
2 of the Plan's participants, and failed to properly consider participants' interests.

3 107. Defendant's wrongful conduct, as alleged herein, caused the Plan to receive
4 fewer future employer contributions than it would otherwise receive, and depleted Plan
5 assets. Defendant's wrongful conduct caused the Plan and/or its participants to pay
6 inflated and prohibited administrative expenses, and to appreciate and/or earn less than
7 the Plan should have. As a direct and proximate cause of Defendant's fiduciary breaches,
8 the Plan suffered injury and losses and, pursuant to 29 U.S.C. § 1109, Defendant is liable
9 for such losses.

10 WHEREFORE, Plaintiff and the Class pray judgment against Defendant as hereafter
11 set forth.

12 **THIRD CLAIM FOR RELIEF**
13 **BREACH OF ERISA'S ANTI-INUREMENT PROVISION**
14 **29 U.S.C. §1103(c)(1)**
15 **(By Plaintiff And Class Members Against Defendant)**

16 108. Plaintiff incorporates the preceding paragraphs as if fully set forth herein and,
17 to the extent necessary, pleads this cause of action in the alternative.

18 109. Pursuant to 29 U.S.C. § 1103(c)(1), "the assets of a plan shall never inure to
19 the benefit of any employer and shall be held for the exclusive purpose of providing
20 benefits to participants in the plan and their beneficiaries and defraying reasonable
21 expenses of administering the plan."

22 110. The funds in a participant's accounts that are forfeited when a break in service
23 occurs prior to full vesting are assets of the Plan.

24 111. By using Plan assets for its own benefit, to reduce its own future employer
25 contributions to the Plan – at least \$17.3 million from 2020 through 2024 alone – thereby
26 saving itself millions of dollars in contribution costs, Defendant caused the assets of the
27 Plan to inure to the benefit of the employer in violation of 29 U.S.C. § 1103(c)(1).

28 112. Pursuant to 29 U.S.C. § 1109(a), Defendant is liable for the Plan losses
resulting from violation of ERISA's anti-inurement provision as alleged in this claim, and

1 must restore to the Plan all profits secured through its use of Plan assets, and is subject to
2 other equitable or remedial relief as appropriate.

3 WHEREFORE, Plaintiff and the Class pray judgment against Defendant as hereafter
4 set forth.

5 **FOURTH CLAIM FOR RELIEF**
6 **IMPRUDENT INVESTMENT SELECTION AND RETENTION**
7 **29 U.S.C. § 1104(a)(1)(B)**
8 **(By Plaintiff And Class Members Against Defendant)**

9 113. Plaintiff incorporates the preceding paragraphs as if fully set forth herein
10 and, to the extent necessary, pleads this cause of action in the alternative.

11 114. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendant was required to act “with
12 the care, skill, prudence, and diligence under the circumstances then prevailing that a
13 prudent man acting in a like capacity and familiar with such matters would use in the
14 conduct of an enterprise of a like character and with like aims.” This duty of prudence
15 requires fiduciaries to engage in an objectively prudent process when selecting,
16 monitoring, and replacing investment options for the Plan, and imposes a heightened duty
17 of independent due diligence when transitioning Plan assets into unregistered, structurally
18 opaque investment vehicles like Collective Investment Trusts (“CITs”).

19 115. Defendant breached its duty of prudence by transitioning the Plan’s default
20 target-date suite from SEC-regulated mutual funds to the unregistered JPMCB
21 SmartRetirement Passive CITs, which held approximately \$570.6 million – over 57% of
22 Plan assets – as of December 31, 2024. Defendant executed this massive transfer of
23 retirement assets without ensuring that participants retained access to standardized, public
24 fee disclosures, without publicly documenting the fee comparison underlying the
25 decision, and without conducting the rigorous, independent evaluation required for
26 unregistered vehicles that lack SEC oversight.

27 116. Defendant further breached its duty of prudence by exercising only minimal
28 and cursory oversight over these opaque CITs. Rather than rigorously scrutinizing the
CITs’ governing documents, underlying fee schedules, and revenue-sharing

1 arrangements – particularly given the severe conflicts of interest posed by the Plan's
2 trustee (BANA) and recordkeeper (Merrill Lynch) – Defendant treated the Plan's largest
3 investment bucket as a “set it and forget it” vehicle, blinding itself and participants to the
4 true, all-in costs.

5 117. Defendant further breached its duty of prudence by failing to leverage the
6 Plan’s enormous asset base – which exceeded \$1 billion by December 31, 2024 – to
7 demand full fee transparency, negotiate customized, lower fee schedules for the CITs, or
8 ensure that the reduced transparency of the CIT structure was actually offset by
9 measurably lower fees and superior performance compared to readily available
10 alternatives in the mega-plan marketplace.

11 118. As a direct and proximate cause of Defendant’s imprudent investment
12 selection, retention, and transition, the Plan and its participants were deprived of crucial
13 fee transparency, paid excessive direct and indirect investment management fees, and
14 suffered losses in the form of diminished investment returns. Pursuant to 29 U.S.C. §
15 1109, Defendant is liable for such losses.

16 WHEREFORE, Plaintiff and the Class pray judgment against Defendant as
17 hereafter set forth.

18
19 **FIFTH CLAIM FOR RELIEF**
20 **FAILURE TO MONITOR FIDUCIARIES**
21 **(By Plaintiff And Class Members Against Defendant)**

22 119. Plaintiff incorporates the preceding paragraphs as if fully set forth herein and,
23 to the extent necessary, pleads this cause of action in the alternative.

24 120. Defendant oversaw the overall governance of the Plan and had authority to
25 delegate fiduciary responsibilities. Plaintiff is informed and believes, and on that basis
26 alleges, that Defendant administered the Plan and/or appointed administrators and
27 committees to assist in Plan management and delegated to them the authority to handle
28 Plan assets, which led to the issues alleged herein.

121. Defendant had a duty to monitor the persons to whom it delegated fiduciary

1 responsibilities, and to take prompt action to protect the Plan and correct any breaches of
2 fiduciary duty or violations of ERISA statutes.

3 122. Defendant breached its duty to monitor the fiduciaries to whom it delegated
4 responsibility for Plan management by, among other things: (i) unreasonably failing to
5 monitor the use of forfeited funds, permitting at least \$17.3 million to be diverted to offset
6 employer contributions; (ii) failing to monitor and reduce the unreasonably excessive
7 administrative expenses paid to Merrill Lynch and other parties in interest; (iii) failing to
8 monitor and replace underperforming and/or higher-cost investment options; and (iv)
9 failing to take steps to ensure that fiduciary duties and ERISA statutes were properly
10 complied with respect to Plan assets.

11 123. As a direct and proximate cause of Defendant's breach of its duty to monitor
12 fiduciaries, the Plan and/or its participants suffered losses, as alleged herein.

13 WHEREFORE, Plaintiff and the Class pray judgment against Defendant as hereafter
14 set forth.

15 **PRAYER FOR RELIEF**

16 Wherefore, Plaintiff, on behalf of the Plan and all similarly situated Plan participants
17 and beneficiaries, prays for judgment against Defendant as follows:

18 (a) A declaration that Defendant has breached its fiduciary duties and engaged in
19 prohibited conduct and transactions as described above;

20 (b) An order that Defendant is liable to make good to the Plan and/or its
21 participants all losses to the Plan resulting from each violation of ERISA described above,
22 including but not limited to restoration of not less than \$17.3 million in diverted forfeitures
23 plus lost investment returns thereon, and to otherwise restore the Plan to the position it
24 would have occupied but for these violations;

25 (c) An order that all assets and profits secured by Defendant as a result of each
26 violation of ERISA described above be disgorged;

27 (d) An order for an accounting to determine the amounts Defendant must make
28 good to the Plan under 29 U.S.C. § 1109(a);

1 (e) Removal of the fiduciaries who have breached their fiduciary duties and an
2 injunction against future ERISA violations;

3 (f) An order requiring Defendant to conduct a competitive request for proposals
4 for recordkeeping services and to adopt a formal forfeiture policy that benefits Plan
5 participants;

6 (g) Surcharge against Defendant and in favor of the Plan for all amounts involved
7 in any transactions which such accounting reveals were improper, excessive and/or in
8 violation of ERISA;

9 (h) An order certifying this case as a class action;

10 (i) An award of attorneys' fees and costs under 29 U.S.C. § 1132(g)(1) and the
11 common fund doctrine;

12 (j) An award to the class representative of a service award;

13 (k) An order for the payment of interest to the extent allowed by law; and

14 (l) Such other equitable or remedial relief as the Court deems appropriate.
15

16 DATED: February 19, 2026

HAFFNER LAW PC

17 By: 
18 _____
19 Joshua H. Haffner
20 Alfredo Torrijos
21 Vahan Mikayelyan

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22 Shaun C. Setareh
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25 *Proposed Class*
26
27
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